

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RANDY PANKEY,

Plaintiff(s),

v.

CITY OF CONCORD, ET AL.,

Defendant(s).

Case No. C-06-3737 JCS

**ORDER DENYING WITHOUT  
PREJUDICE, DEFENDANTS MOTION  
TO DISMISS COMPLAINT FOR  
FAILURE TO EFFECT SERVICE [Docket  
No. 16]; DENYING WITHOUT  
PREJUDICE PLAINTIFF'S IFP  
APPLICATION [Docket No. 13] AND  
CASE MANAGEMENT AND  
PRETRIAL ORDER**

On September 28, 2006, Defendants filed a Motion to Dismiss Complaint for Failure to Effect Service (the "Motion to Dismiss")

On November 3, 2006, the Motion to Dismiss and an initial case management conference came on for hearing. Randy Pankey, pro se, appeared. Mark Coon, counsel for Defendants, appeared.

For reasons stated on the record, and good cause shown, IT IS HEREBY ORDERED THAT the Motion to Dismiss is DENIED without prejudice.

IT IS HEREBY FURTHER ORDERED THAT:

1. Defendant's opposition to Plaintiff's Motion for Collateral Estoppel and Demand For Damages (the "Motion"), shall be filed by **November 10, 2006**. There will be no reply brief. Upon the filing of the opposition, the Motion shall be taken under submission.

2. Plaintiff's In Forma Pauperis (IFP) Application, filed on September 21, 2006, is DENIED without prejudice. Plaintiff shall re-file a completed IFP Application by **November 10, 2006**.

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1 3. All dates that were set by Judge Alsup are VACATED, except for the referral to  
2 Magistrate Judge Bernard Zimmerman for a settlement conference.<sup>1</sup>

3 4. Defense counsel shall consult with his clients to determine whether he can accept service  
4 of the summons and complaint in this matter on behalf of all Defendants.

5 5. An updated case management conference statement, with proposed dates, shall be filed by  
6 **December 1, 2006.**

7 6. A further case management conference is set for **December 8, 2006, at 1:30 p.m.**

8 IT IS SO ORDERED.

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10 Dated: November 6, 2006

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13 JOSEPH C. SPERO  
14 United States Magistrate Judge  
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<sup>1</sup>Judge Zimmerman issued his Settlement Conference Order on Sept. 28, 2006, setting the settlement conference for Feb. 1, 2007 at 9:00 AM